

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

REPORTABLE: **NO**
OF INTEREST TO OTHER JUDGES: **NO**
REVISED **NO**
DATE: 29 February 2024
CASE NO: 072233/2023

In the matter between:

JERRY MTSHEPU

APPLICANT

AND

DIRECTOR GENERAL OF DEPARTMENT OF HOME AFFAIRS	1 ST RESPONDENT
MINISTER OF HOME AFFAIRS	2 ND RESPONDENT
DEPARTMENT OF HOME AFFAIRS	3 RD RESPONDENT

JUDGMENT

KHWINANA AJ

INTRODUCTION

[1] The applicant is an adult male Jerry Mtshepu who is residing at 2[...] C[...] street Vosloorus Extension 2[...] in Gauteng Province.

[2] The first respondent is Director General of Department of Home Affairs, the second respondent is Minister of Home Affairs and

[3] This is an application wherein the applicant seeks an order as follows:

(a) That the third respondent be directed to issue the applicant with a South African identification within 15 days of this order.

(b) Costs of the application on a party and party scale respondents have been against third respondent.

[4] This is an unopposed application wherein the second respondents have been served on the 18th October 2023 through the State Attorney offices.

BACKGROUND

[5] The applicant is recorded as a male person born in the Republic of South Africa on the 09th September 2002 with annexure DBO1 depicting his details. He is currently residing with his father whose name is reflected in the birth certificate as Jimmy Mtshepu.

- [6] He says that on several occasions the respondents refused to assist him thus He is unable to further his studies nor to enter the job market. He says that his father was also denied assistance by the respondents. His lawyers wrote a letter marked annexure DBO2 dated 14 July 2023.
- [7] The nature of the application is that the Department of Home Affairs failed or refused to grant applicant's identification of the Republic of South Africa.
- [8] He matriculated in 2019 at Erasmus Monareng Secondary School and obtained his National Senior Certificate marked as annexure DBO3 (which is not attached to the founding affidavit and there is no item termed annexures on caselines).
- [9] He says he obtained an affidavit at Vosloorus Police Station marked as annexure DBO4 (which is not attached to the founding affidavit and there is no item termed annexures on caselines).

LEGAL MATRIX

- [10] In terms of the Promotion of Administrative Justice Act 3 OF 2000 section

5 'Reasons for administrative action'

(1) Any person whose rights have been materially and adversely affected by

administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action.

- (2) The administrator to whom the request is made must, within 90 days after receiving the request, give that person adequate reasons in writing for the administrative action.
- (3) If an administrator fails to furnish adequate reasons for an administrative action it must, subject to subsection
- (4) and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.

[11] Kruger AJ¹ held that “Section 3 of PAJA elaborates on the requirement of procedural fairness in administrative action. It explains that procedural fairness is determined by the circumstances of each case, and that it requires notification to the affected person of the purpose of the proposed administrative action, a reasonable opportunity to make representations, a clear statement of the administrative action, adequate notice of opportunities for appeal or internal review of the administrative action and adequate notice of the right to request reasons. It is evident that procedural fairness relates not to the fairness of the decision itself but to the way in which the decision-maker arrived at the decision, and the opportunity of the affected person to influence the decision”.

¹ David v Minister of Home Affairs (2411/2019) [2021] ZAECGHC 43 (4 May 2021)

ANALYSIS

- [12] The applicant wants the court to consider his application from the perspective that there was refusal to assist in issuing an identification for the applicant. It is evident that PAJA² sets out the procedure to be followed to firstly solicit reasons.
- [13] In the present case, there is no indication that the applicant requested reasons for the alleged impugned decisions that it seeks to have reviewed save for a letter of demand from the applicant's attorneys³. That being said, without treading the prescribed path, this application is destined to be dead in the water.
- [14] The applicant urges the court to assess his application in light of the perceived denial of assistance in obtaining an identification document. It is apparent that the Promotion of Administrative Justice Act (PAJA) outlines the prescribed procedure, primarily involving the initiation of a request for reasons.
- [15] The individual identified as the applicant asserts that his father, Jimmy Mtshepu, has been applying for an identification document on his behalf. It is crucial to note that there is an absence of a confirmatory affidavit supporting this

² Promotion of Administrative Justice Act 2000

³ Mkhombo and Others v Minister of Defence (31242/18) [2021] ZAGPPHC 741 (2 November 2021)

application, which is indicative that the evidence submitted has not been corroborated.

[16] In *casu* it is evident that there is no indication that the applicant formally sought reasons for the decisions under scrutiny, which it aims to have reviewed. The sole reference to such a request comes in the form of a demand letter from the applicant's legal representatives which falls short of the procedure outlined.

[17] It's worth noting that deviating from the prescribed procedure outlined poses inherent challenges for this application right from the start. The applicant filed a standard application to compel registration of an identification document. I must emphasize that procedurally, this is not the correct approach for the applicant to take before this court.

[18] The applicant fails to specify the elapsed time, crucial in determining whether an application for condonation would be apt in this trajectory. The applicant's case is full of holes, making it dead in the water and unlikely to sail to success. It is imperative for the applicant to be well-versed in the applicable law when bringing forth an application, and to diligently adhere to the prescribed procedure as mandated.

[19] In the result, the application is dismissed with no order as to costs.

**ENB KHWINANA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

COUNSEL FOR PLAINTIFF: ADV MS MORETSELE

DATE OF HEARING: 19 DECEMBER 2023

DATE OF JUDGMENT: 29 FEBRUARY 2024

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 29 February 2024.